IN THE HIGH COURT OF DELHI

CONT.CAS(C) NO.442/2007

Subhash Chander ..... Petitioner
! through: Mr.Arvind Nayar, Advocate

VERSUS

$ T.K.Bhattacharya & Ors. ..... Respondents
^ through: Ms.Jyoti Singh, Advocate

% DATE OF DECISION: 10.12.2007

CORAM:

* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment? Y

2. To be referred to the Reporter or not? Y

3. Whether judgment should be reported in Digest? Y

: **PRADEEP NANDRAJOG, J.**

1. A short issue arises for consideration. Whether the Regional Director of Employees State Insurance Corporation was competent to pass the order Annexure P-3?

2. An ancillary question also requires to be answered. If it is held that the Regional Director could not have passed the order Annexure P-3, are the respondents in contempt of the order dated 24.5.2007 passed by a Division Bench of this Court in WP(C) No.3942/2007.

3. Petitioner had filed the afore-noted writ petition being aggrieved by the order passed by the Central

Administrative Tribunal dismissing his original application as pre-mature. Grievance of the petitioner was that certain documents vital to his defence were not made available to him. Disposing of the writ petition, with consent of parties following directions were issued :-

> "Respondents would within a week from today supply to the petitioner photocopy of the documents/record mentioned at Sr.Nos.1 to 16 which are at page 72 of the paper book. In case, it is not possible to supply photo copy of any of the record on account it being illegible or bulky respondent would grant an inspection of the same to the petitioner duly performing him of the date and time when inspection can be carried out. Petitioner within three weeks of receipt of documents/record and inspection, if any, required, would submit his representation which would be considered by the Disciplinary Authority of the respondent and the decision taken thereon be conveyed to the petitioner.
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> Petitioner, if so required, be also granted inspection of record in relation to the charge sheet dated 31st May,2006 and in respect of the documents mentioned in his representation dated 30th June,2006 to enable him to submit the aforesaid representation."

4. Grievance of the petitioner is that in terms of the consent directions he submitted a representation on 20.6.2007 pleading that in view of his response the charge-sheet issued to him be dropped. The said representation has been rejected by the Regional Director on 25.7.2007.

5. Case of the petitioner is that the representation had to be considered and decision taken thereon by the

disciplinary authority. Since the charge-sheet pertains to a major penalty, as per the Service Regulations of Employees State Insurance Corporation, the same had to be considered by the Insurance Commissioner. It is stated by the petitioner that the Regional Director was biased against the petitioner and allegations of bias were raised in the writ petition. For the said reason it was directed that the disciplinary authority would consider the representation of the petitioner.

6. In the reply it is stated that the representation was made to the Regional Director and that the Regional Director was competent to take the decision. Reliance has been placed by the respondent upon Regulation 13 pertaining to powers of the Regional Director to act as the disciplinary authority.

7. It is not in dispute that the appointing authority of the petitioner is the Insurance Commissioner as per entry at serial No.3 of the 5th Schedule to the Regulations. It is also not in dispute that as per the 5th Schedule, for levying major as well as minor penalty disciplinary authority is the Insurance Commissioner. It is also not in dispute that pertaining to minor penalties Regional Director can also function as the disciplinary authority.

8. It is not in dispute that the charge-sheet which has been issued to the petitioner pertains to a major penalty

proceeding. Thus, as per the 5th Schedule the disciplinary authority has to be the Insurance Commissioner.

9. Regulation 13 relied upon by the respondent reads as under :-

> 13. AUTHORITY TO INSTITUTE PROCEEDINGS -
>
> (1) The Director General or any other authority empowered by him by general or special order may,
>
> (a) institute disciplinary proceeding against any employee;
>
> (b) direct a disciplinary authority to institute disciplinary proceedings to institute disciplinary proceedings against any employee on whom that disciplinary authority is competent to impose under these regulations any of the penalties specified in regulation 11.
>
> (2) A disciplinary authority competent under these regulations to impose any of the penalties specified in clauses (i) to (iv) of regulation 11 may institute disciplinary proceedings against any employee for the imposition of any of the penalties specified in clauses (v) to (ix) of regulation 11 notwithstanding that such disciplinary authority is not competent under these regulations to impose any or latter penalties.

10. Reliance was placed upon sub-regulation (2) of Regulation 13.

11. A bare perusal of Regulation 13 and in particular sub-regulation (2) thereof shows that pertaining to the penalties specified in Clauses (i) to (iv) of Regulation 11 the disciplinary authority relatable to said penalties may institute

disciplinary proceedings for imposition of penalties specified in Clauses (v) to (ix) thereof.

12. It is not in dispute that penalties specified in Clauses (i) to (iv) of Regulation 11 are minor penalties and Clauses (v) to (ix) pertain to major penalties. Thus, position would be that the disciplinary authority pertaining to minor and major penalties would be the Insurance Commissioner. Additionally, but pertaining only to minor penalties, Regional Director would also be the disciplinary authority. But, for a major penalty only the Insurance Commissioner would be the disciplinary authority.

13. Regulation 13 only empowers the disciplinary authority competent to impose minor penalties to institute disciplinary proceedings pertaining to major penalties. As stated in the caption of Regulation 13 it deals with the authority to institute proceedings. Thus, by virtue of Regulation 13, pertaining to a major penalty the Regional Director cannot be the disciplinary authority of the petitioner.

14. A submission was made by learned counsel for the respondent. It was urged that the representation of the petitioner is addressed to the Regional Director. Counsel for the petitioner explains that the petitioner had to send the representation through proper channel.

15. I accordingly hold that as per the consent directions the disciplinary authority alone and not the authority empowered to initiate the disciplinary proceedings had to consider the representation made by the petitioner. This aspect of the matter assumes significance in the context of the petitioner having alleged bias in the writ petition against the Regional Director who I note was impleaded as a respondent in the writ petition.

16. However, it appears that the respondent has acted under a bonafide legal advise. Thus, I do not hold it to be a case of a contumacious violation of the order passed by this court.

17. I discharge the notice of contempt but simultaneously direct that the disciplinary authority of the petitioner i.e. Insurance Commissioner would consider the representation of the petitioner made pursuant to the consent directions i.e. the representation which has been annexed as Annexure P-2 to the contempt petition. Decision would be taken within 4 weeks from today and be communicated to the petitioner.

18. No costs.

December 10, 2007 **PRADEEP NANDRAJOG, J.**
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